



Signed and Filed: February 24, 2020

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re: ) Bankruptcy Case  
PG&E CORPORATION, ) No. 19-30088-DM  
- and - ) Chapter 11  
PACIFIC GAS AND ELECTRIC COMPANY, ) Jointly Administered  
Debtors. )  
☐ Affects PG&E Corporation )  
☐ Affects Pacific Gas and Electric Company )  
☒ Affects both Debtors )  
*\* All papers shall be filed in the Lead Case, No. 19-30088 (DM).*

**MEMORANDUM DECISION REGARDING MOTION TO APPLY RULE 7023**

Lead Plaintiffs ("Movants"<sup>1</sup>) in pending district court litigation filed a motion (the "Motion") (dkt. #5042) to apply Federal Rule of Civil Procedure 23, made applicable here by Federal Rule of Bankruptcy Procedure ("FRBP") 7023 to their class proofs of claim on December 9, 2019. Debtors and the Official Committee of Tort Claimants ("TCC") filed

<sup>1</sup> Movants are as defined in the Motion.

1 oppositions and the matter was heard on January 29, 2020. Following that hearing, the court  
2 issued a tentative ruling (dkt. #5604) signaling its intent to either grant the Motion or extend the  
3 claims bar date to allow individual members of the class to file proofs of claim, and soliciting  
4 further briefing from the parties regarding those options. The parties filed supplemental briefs,  
5 the matter was again heard on February 20, 2020, and the matter was submitted. For the  
6 reasons below, the court will deny the Motion but will also extend the claims bar date for  
7 individual members of the class.

### 8 **Background**

9 Movants filed a complaint in district court on June 12, 2018, which suit was eventually  
10 consolidated and a lead plaintiff appointed (hereinafter the “Securities Litigation”). After  
11 Debtors filed bankruptcy on January 29, 2019, the Securities Litigation was automatically  
12 stayed by virtue of 11 U.S.C. § 362(a), Debtors filed an adversary proceeding to enjoin  
13 continued prosecution of the Securities Litigation (AP No. 19-03006). After the lead plaintiff  
14 there was dismissed from the adversary proceeding, Debtors were given a timeline to file a new  
15 adversary proceeding seeking to enjoin the plaintiffs from prosecution of the proceeding against  
16 the remaining non-debtor defendants in the district court action (AP No. 19-3039).

17 Briefly, Movants’ claims against Debtors amount to securities fraud claims, alleging that  
18 Debtors (and others) misled investors about their wildfire safety practices. Movants allege that  
19 these practices artificially inflated stock prices, which then dropped after information regarding  
20 Debtors’ improper safety practices emerged between 2017 and 2018. Movants also bring  
21 claims regarding the accuracy of certain offering documents for notes issued between 2016 and  
22 2018. Movants represent a class of investors who acquired securities between April 2015 and  
23 November 2018 and suffered losses as a result of the alleged misleading statements. Currently,  
24 non-Debtor defendants have filed a motion to dismiss the Securities Litigation, which has been  
25 submitted for resolution by the district court.

### 26 **Analysis**

27 Movants request application of FRBP 7023 to their timely filed class proofs of claim  
28 (POC ##72193, 72273). Class proofs of claim are permitted in bankruptcy cases, typically

1 using a two-step process, whereby the court first allows the class proof of claim to be filed, and  
2 then determines whether certification is appropriate. *See In re Musicland Holding Corp.*, 362  
3 B.R. 644, 651 (Bankr. S.D.N.Y. 2007). In considering the first step, courts typically apply the  
4 factors laid out in *In re Musicland Holding Corp.*, which are as follows:

- 5 1) whether the class was certified pre-petition;
- 6 2) whether members of the putative class received notice of the bar date, and
- 7 3) whether class certification will adversely affect the administration of the estate.

8 *Id.* at 654 (citations omitted). In applying the first factor, the class here has not yet been  
9 certified, but this fact is not fatal to Movants. Because a motion to dismiss is currently pending  
10 in the Securities Litigation, Movants are unable to certify their class at this point. 15 U.S.C.  
11 § 78u-4(b)(3)(B) (West) (“[i]n any private action arising under this chapter, all discovery and  
12 other proceedings shall be stayed during the pendency of any motion to dismiss”).  
13 Consequently, this factor does not weigh against them. *See In re MF Glob. Inc.*, 512 B.R. 757,  
14 763 (Bankr. S.D.N.Y. 2014); *Schuman v. The Connaught Grp., Ltd. (In re The Connaught Grp.,*  
15 *Ltd.)*, 491 B.R. 88, 98 (Bankr.S.D.N.Y.2013).

16 The second factor weighs heavily in favor of granting the Motion. Previously in this  
17 case, the claims bar date was extended to October 21, 2019, and then extended to a later date  
18 specifically for wildfire victim claimants. Putative members of the class did not receive actual  
19 notice of the general claims bar date (although Debtors argue that they certainly received  
20 constructive notice). The parties appear to agree that known creditors are entitled to actual  
21 written notice of the claims bar date. *See Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir.  
22 1995). However, the parties differ on whether members of the putative class are known  
23 creditors. A known creditor is one whose identity is either known or reasonably ascertainable  
24 by the debtor, and all creditors’ identities are reasonably ascertainable if they can be identified  
25 through reasonably diligent efforts. *Id.* (citation omitted). Reasonable diligence generally  
26 requires a search of a debtor’s books and records. *Id.* Debtors here were aware of the  
27 Securities Litigation, filed in 2018, and of its consolidation with other action. Debtors  
28 participated in the litigation and filed an adversary proceeding against the lead plaintiff, in this

1 bankruptcy. As such, Debtors knew of the existence of the putative class members and their  
2 status as potential creditors. An examination of their books and records would have yielded this  
3 information. Consequently, the putative class members here are known creditors entitled to  
4 actual written notice. As Debtors failed to provide this notice, this factor weighs in favor of  
5 granting the Motion. The briefing indicates that there is a well-established procedure for  
6 noticing investors through nominees. Initially, Debtors indicated that they were unable to  
7 implement this procedure (dkt. #5370) but have since reversed their position and stated that  
8 they are able to implement this procedure (dkt. #5789).

9       The third factor is of particular importance to this bankruptcy—it is unclear at this point  
10 whether class certification will adversely affect administration of the estate, and the court is  
11 inclined to weigh this factor in favor of Debtors. This bankruptcy faces the anomalous  
12 circumstance of a legislative deadline for plan confirmation, and numerous other considerations  
13 that render the timeline for confirmation to be shorter than most other cases. Disclosure and  
14 confirmation deadlines have been set and significant resources are being expended to ensure  
15 that confirmation will occur by the end of June 2020. However, unlike in *Musicland*, the  
16 parties here did not sit on their rights until it was too late. *See Musicland*, 362 B.R. at 649.  
17 Instead, Movants here are prejudiced by an extrinsic deadline for confirmation that is unrelated  
18 to their claims. The court is also aware of the possibility that it may grant this motion and then  
19 be forced to deny the subsequent class certification motion—which would give all parties even  
20 less time to cure the due process issues laid out above, and potentially derail a precarious  
21 confirmation process. At this juncture, it appears granting the Motion may result in more chaos  
22 than certainty. It is ultimately a close call, but the alternative route described below appears  
23 poised to generate less (but likely some) chaos.

24       Because Debtors did not make a reasonable effort to give actual notice to class members  
25 of the claims bar date, the court will extend the bar date for this group of creditors. This  
26 alternative has been recognized by other courts. *See Connaught*, 491 B.R. at 97 (“[i]f a class  
27 action was filed prior to the running of the statute of limitations and class certification is denied,  
28 the tolling of the statute of limitations will give the class members additional time to assert their

1 individual rights. . . . The same tolling rule applies in bankruptcy. If the representative files a  
2 timely adversary proceeding or class proof of claim, and the Court denies a motion to certify the  
3 class, it should set a reasonable bar date to allow the members of the putative class to file  
4 individual claims.”). Movants here filed a timely proof of claim, thus, the court is prepared to  
5 follow the reasoning in *Connaught* and set a reasonable bar date to allow class members to file  
6 individual proofs of claim.

7 **Conclusion**

8 The court will separately issue a proposed order on the Motion and a proposed, revised,  
9 notice of extended bar date.

10 **\*\*\* END OF MEMORANDUM \*\*\***